



May 21, 1999

Ms. Sharon Alexander
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR99-1421

Dear Ms. Alexander:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124299.

The Texas Department of Health (the "department") received a request for "prescription level information relating to best price rebates" for each quarter of 1998 and 1999.¹ You claim that the responsive information is excepted from disclosure by section 552.101 of the Government Code. You have submitted a sample of the information you seek to withhold.²

¹You explain that you released information similar to the requested data to Data Niche Associates, Inc. pursuant to a Compromise Settlement Agreement resulting from *Data Niche Associates, Inc. v. Archer*, No. 97-12537 (261st Dist. Ct., Travis County, Tex., Oct. 20, 1998). In compliance with the agreement, the department did not disclose the prescription identification number. We decline to address the relevance of the Compromise Settlement Agreement to the present request.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you explain that the 1999 requested information does not currently exist. The Public Information Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision Nos. 452 (1986), 362 (1983); *see also* Open Records Decision No. 605 (1992). Thus, you need not comply with that portion of the request.

You explain that the requested information relates to persons receiving Medicaid assistance. You argue that all of the submitted information must, therefore, be withheld because it is confidential Medicaid information under section 12.003 of the Human Resources Code. Section 552.101 of the Government Code excepts from disclosure information that is made confidential by law, including information made confidential by statute. Section 12.003 of the Human Resources Code provides:

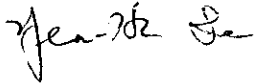
(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties. [Emphasis added.]

In Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See* Hum. Res. Code § 21.012; Open Records Decision No. 166 (1977). You state that release here is not for the administration of the Texas Medicaid Vendor Drug Program. Consequently, those documents related to clients, applicants, and recipients of the assistance programs must be withheld under section 552.101. One of the submitted documents, however, does not appear to relate to clients, applicants, or recipients; the record reflects information pertaining only to the providers. This document does not mention, refer to, or in any way identify clients, applicants, or recipients of public assistance. We do not believe that this document may be withheld under the rationale of Open Records Decision No. 584 (1991). *See* Open Records Decision No. 487 at 5-6 (1988). We have marked the document that is not confidential and must be released. The remaining records must be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL\nc

Ref: ID# 124299

encl.:Marked documents

cc: Mr. Dave Baacke
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(w/o enclosures)